

REMARKS

This application has been amended in a manner that is believed to place it in condition for allowance at the time of the next Official Action.

Claims 29 and 37-39 are pending in the present application. Claim 29 has been amended to incorporate the recitations of claims 30 and 33. Claim 29 has also been amended to recite that the gene conferring male sterility and the transgene can be combined together or each respectively, with a transcriptional control system. Support for the recitation may be found at page 1, lines 29-32 of the present specification. Claims 30 and 33-36 have been canceled.

In the outstanding Official Action, claims 29-30 and 33-34 were rejected under 35 USC 112, first paragraph, for allegedly not satisfying the written description requirement. Applicants believe that the present amendment obviates this rejection.

In imposing the rejection, the Official Action stated that the rejection was maintained for the reasons of record as set forth in the Office Action mailed February 24, 2004. The Office Action of February 24, 2004 stated that the claims were broadly drawn to the method of preventing dissemination of any transgene of interest wherein the method utilized a maize, rape or tomato plant with cytoplasmic male sterility, any artificial male

sterility gene, and/or any transgene encoding a therapeutic or prophylactic compound of human or animal origin. However, claim 29 has been amended to recite a transgene that is the dog gastric lipase or collagen, to a plant that is maize, rape, or tomato, and to a gene conferring male sterility that is a barnase or a glucanase.

Moreover, applicants reiterate that claim 29 recites a transformation of the nuclear genome of a plant. Thus, the claims do not recite a method for preventing dissemination of any transgene of interest wherein the method used is a plant with cytoplasmic male sterility.

As a result, applicants believe that the present amendment obviates the written description rejection.

Claims 29-30 and 33-34 were rejected under 35 USC §112, first paragraph, for allegedly not satisfying the enablement requirement.

The Official Action alleged that the present disclosure did not reasonably provide enablement for methods for preventing dissemination of any transgene of interest wherein the methods used any artificial male sterility gene expressed from any promotor, and/or a transgene encoding any therapeutic or prophylactic compounds of human or animal origin. However, as noted above, claim 29 recites a method for preventing the dissemination of a transgene, wherein the transgene is the dog

gastric lipase or collagen, the recited plant is maize, rape or tomato, and the gene conferring male sterility is barnase or glucanase. As a result, applicants believe that the present amendment obviates the enablement rejection.

Claims 29-30 and 33-36 were rejected under 35 USC §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. This rejection is respectfully traversed.

In imposing the rejection, the Official Action states that the recitation of "artificial male sterility" is unclear. As a result, applicants have amended the claims to recite --a gene conferring male sterility--.

In addition, claims 28-29 were rejected for reciting the phrase "therapeutic or prophylactic compound". However, as noted above, claims 28-29 have been canceled. Moreover, claims 29 and 37-39 have been amended and/or drafted in a manner so that the claims no longer recite the phrase "therapeutic or prophylactic compound". As a result, applicants believe that the claims are definite to one of ordinary skill in the art.

Claims 29-30 and 33-36 were rejected under 35 USC §103(a) as allegedly being unpatentable over D'Halluin et al. in view of Metz et al. and Lenée et al.

D'Halluin et al. disclose a process for transforming monocotyledonous plant that comprises transforming plant cells with a sequence encoding a protein of interest and 3' transcription regulation signals (see col. 8, lines 37-45). The protein of interest may be a protein that renders the plant male sterile (see col. 10, lines 32-50).

D'Hallulin et al. do not disclose the transformation of maize with a gene encoding gastric lipase or collagen. D'Hallulin et al. disclose transformation with a herbicide selection gene which uses a selectable marker. Thus, contrary to claim 29, the transgene does not encode a protein which is to be extracted from the plant, such as gastric lipase or collagen. In an effort to remedy the deficiencies of D'Hallulin et al., the Office Action cites to Metz et al.

Metz et al. relates to the transformation of male-sterile lines. Thus, as the lines utilized by Metz et al. are already male-sterile, applicants believe that one of ordinary skill in the art would not have referred to Metz et al.

As to Metz et al., applicants believe that one of ordinary skill in the art would have lacked the motivation and reasonable expectation of success to combine D'Hallulin et al. in view of Metz et al., in a manner so as to obtain the claimed invention.

In an effort to remedy the deficiencies of the two publications, the Office Action cites to Lenée et al. However, applicants believe Lenée et al. fail to remedy these deficiencies. Indeed, Lenée et al. is directed to recombinant preduodenal lipases and polypeptides derivatives produced by plants. Lenée et al. fail to provide the necessary motivation or reasonable expectation of success that would lead one skilled in the art to combine and modify the above-identified publications to remedy the identified deficiencies.

As a result, applicants believe that the proposed combination fails to disclose or suggest the claimed invention.

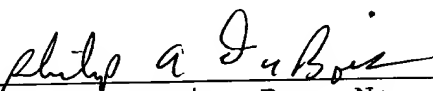
In view of the present amendment and foregoing remarks, therefore, applicants believe that the present application is in condition for allowance at the time of the next Official Action. Allowance and passage to issue on that basis are respectfully requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any

overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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